

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Ben's Auto Body, Inc.,
Plaintiff

v.

Civil No. 08-cv-207-SM

Ben Teitelbaum and
Patricia A. Kafka,
Defendants

NOTICE OF RULING

Re: Document No. 3, Plaintiff's Motion to Remand

Ruling: Denied. As the party invoking federal jurisdiction, defendants bear the burden of establishing in this case that the amount in controversy exceeds \$75,000, exclusive of interest and costs. The amount in controversy is determined at the time of removal. As is required under New Hampshire practice, the state complaint (writ) does not state the amount demanded. But, as pointed out by defendants, the multiple claims made and the nature of those claims, the statutory fee-shifting provisions invoked, the statutory provisions for multiplication of damages applicable to the claims made, and verdicts returned in roughly similar cases, all combine to make it facially apparent that a jury "could" return verdicts permitting recovery in excess of the jurisdictional amount on plaintiff's claims. Plaintiff says, in support of its motion to remand, that its claims do not exceed \$75,000, but that statement is unclear - it may be intended as little more than a comment on plaintiff's expectation regarding a likely recovery, but it is a far cry from a stipulation "clarifying" the amount claimed under the writ, by unequivocally forfeiting any recovery in excess of the jurisdictional amount. To the extent plaintiff's comment seeks to actually reduce the amount in controversy below the jurisdictional amount, post-removal, it is, of course ineffective. See generally, Lowe v. Sears Holding Corporation, 545 F.Supp. 2d 195 (D.N.H. 2008).

Entered by: Steven J. McAuliffe, Chief Judge

Date: June 25, 2008

cc: Earl L. Kalil, Jr., Esq.
Christopher E. Ratte, Esq.
Daniel E. Will, Esq.